

In the Matter of Merchant Mariner's Document No. Z-67420 and all other Seaman Documents
Issued to: CHRIST W. SCHWENK

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1229

CHRIST W. SCHWENK

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 5 May 1960, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. The two specifications found proved allege that while serving as an unlicensed Junior Engineer on board the United States SS SANTA CECILIA under authority of the document above described, on or about 6 February 1960, Appellant wrongfully used profane language which was heard by passengers (first specification); and he wrongfully addressed the Chief Mate with foul and abusive language (second specification).

At the hearing, Appellant was represented by counsel. Appellant entered pleas of not guilty to the charge and both specifications.

The Investigating Officer introduced in evidence the testimony of the Chief Mate and First Assistant Engineer. Appellant testified in his defense. He repeatedly denied that he used the type of language alleged.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of two months outright plus two months on twelve months' probation.

FINDINGS OF FACT

On 6 February 1960, Appellant was serving as an unlicensed Junior Engineer on board the United States SS SANTA CECILIA and acting under authority of his document while the ship was departing Philadelphia, Pennsylvania.

On this date, Appellant returned on board at approximately the 2000 scheduled departure time with twelve cans of beer which were confiscated by the Chief Mate. Appellant's request for a receipt for the beer was rejected by the Chief Mate. Consequently, Appellant followed the Mate to a passenger area, referred to as Purser's Square, and demanded a receipt. When the Mate still refused,

Appellant directed foul and abusive language to the Chief Mate in a very loud voice. There were several passengers in the vicinity. The First Assistant Engineer was also present. He persuaded Appellant to go below after the Mate had walked away.

A short time later, this incident was being discussed in the Master's room when Appellant addressed the Chief Mate with the same kind of language and challenged him to a fight. Appellant then left and caused no more trouble for the balance of the voyage.

Appellant's prior record consists of a probationary suspension in 1957 for creating a disturbance on board ship.

OPINION

The only ground of appeal submitted is that the findings and decision of the Examiner are contrary to the weight of the evidence.

This contention is rejected as to the second specification because the Examiner accepted the testimony of the Chief Mate which was corroborated by the First Assistant Engineer with respect to the incident in the passenger area.

Concerning the first specification, there is no evidence that Appellant used "profane" language. Therefore, the finding that this specification was proved is reversed and the specification is dismissed.

The Examiner pointed out that the authority of ships' officers must be respected in order for them to carry out their duty to maintain the discipline essential for the safe operation of vessels. In view of Appellant's misconduct on two occasions on the same day and in the same manner, the order is not considered to be excessive despite the dismissal of one of the two specifications.

The order of the Examiner dated at New York, New York, on 5 May 1960, is AFFIRMED.

J. A. Hirshfield
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 14th day of April 1961.